

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5747

PETITION OF RICHARD STERLING MEHRING

(Hearing held May 8, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, June 13, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c)(4). The petitioner proposes to construct an accessory structure (garage) that requires a 6.50 foot variance as it is within 2.50 feet of the side lot line. The required setback is nine (9) feet.

Carey Hoobler, a neighbor, appeared in support of the variance request.

The subject property is Lots 10 and 11, Block 24, Joseph's Park Subdivision, located at 2505 Forest Glen Road, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 01005097).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 24 x 32.4 foot accessory structure (garage) with a workshop. The garage would be located in the western side yard.
2. The petitioner testified that he proposes to construct the garage on the existing concrete slab. See, Exhibit No. 6(b). The petitioner testified that the concrete slab was built in 1993 and that the garage was not built at the same time as the pad.
3. The petitioner testified that the topography of the lots on the block slope and that his lot slopes from east to west. The petitioner testified that his lot is the property most impacted by the slope and that a mature Poplar tree would also be impacted by the construction of a garage elsewhere on the property.
4. The petitioner testified that the garage would have electricity, but would not have water or sewer. The petitioner testified that the materials for the garage would match the architectural features of the residence.

5. In response to questions from the Board, the petitioner testified that the conditions of the property did not prevent a garage from being located elsewhere on the lot.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's property has no exceptional topographical or other conditions that are not shared with the adjoining properties. The Board further finds that the property is consistent in size and shape with the other lots in the immediate neighborhood. See, Exhibit No. 8.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions*

The Board finds that the garage, as proposed, is not the minimum reasonably necessary as it could be built elsewhere on the lot.

Since the petition does not meet the requirements of Section 59-G-1.3(a) and (b). The Board did not consider the other requirements in that section for the grant of variance. Accordingly, the requested variance of 6.50 feet from the required nine (9) foot side lot line setback for the construction of an accessory structure (garage) is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 13th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.